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SEP 26 2003

In re Application of
James Austin Kendrick
Filed: December 18, 2001
Application No. 10/023,677
Attorney Docket No.: P23713.A02

OFFICE OF PETITIONS
:
: **DECISION GRANTING**
: **PETITION**
:

This is a decision on the request for resealing, filed May 12, 2003, and the petition to expunge filed July 18, 2003.

The request for resealing has been treated as a request to place the papers in compliance with Manual of Patent Examining Procedure (MPEP), Section 724.02, and is granted.

The petition to expunge is granted-in-part.

On December 18, 2001, applicant filed a two page Information Disclosure Statement (IDS). Subsequently, on September 19, 2002, applicant filed a supplemental IDS with a four page listing of references. One of the references submitted was a proprietary document, a declaration signed by Scott T. Roger. This proprietary document was cited on the IDS.

On July 18, 2003, petitioner filed a new IDS. Petitioner also filed a supplemental IDS and one page listing that cites only the proprietary document, and includes the Roger declaration in a sealed, labeled envelope in accordance with MPEP § 724.02.

Petitioner requests that the IDS filed September 19, 2002, along with the IDS and the proprietary document be expunged from the record and returned to Applicant, explaining that these were intended to be submitted in compliance with the MPEP. Petitioner further requests that all other references which accompanied the submission filed September 19, 2002, remain in the file. The request to "reseal" is not granted, because the originally filed application papers do not reflect an intention for the Roger declaration to be maintained in confidence because the procedures set forth in the MPEP were not followed. Moreover, since the original documents were not "sealed" they cannot be "resealed". The declaration has been removed from the stack of references and discarded. A duplicate copy was supplied in compliance with the MPEP. The petition to expunge is granted in part because rather than being expunged and returned, the first copy of the Roger declaration has been expunged and destroyed.

The listing submitted September 19, 2002 will remain in the file to preserve the prosecution history. Both Information Disclosure Statements filed July 18, 2003, have been made of record in the file.

After mailing of this decision, the application will be forwarded to Technology Center 1700 for examination in due course. The petition fee set forth in 37 CFR § 1.17(i) will be charged to petitioner's deposit account 19-0089.

Telephone inquiries concerning this communication should be directed to Terry J. Dey at (703) 308-1201.



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